

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT SPEED,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

1:04-CR-0336 (PKC)

1:23-CV-4809 (PKC)

TRANSFER ORDER

P. KEVIN CASTEL, United States District Judge:

Movant Robert Speed, who is currently incarcerated in the Federal Correctional Institution at Joint Base MDL, New Jersey (FCI Fort Dix), brings this *pro se* motion under 28 U.S.C. § 2255, challenging his judgment of conviction entered in *United States v. Speed*, ECF 1:04-CR-0336, 73 (S.D.N.Y. May 22, 2006). For the reason set forth below, the Court transfers this action to the United States Court of Appeals for the Second Circuit.

Court records show that Movant has filed previous motions for relief under Section 2255, challenging the same judgment of conviction, which were denied on the merits. *See Speed v. United States*, Nos. 10-CV-3333, 04-CR-0336, 2012 WL 1003469 (S.D.N.Y. Mar. 26, 2012), *appeal dismissed*, Nos. 13-1242, 13-1248 (2d Cir. June 17, 2013); *Speed v. United States*, Nos. 12-CV-7777, 10-CV-3333, 04-CR-0336, 2013 WL 416026, at *4 (S.D.N.Y. Feb. 4, 2013), *appeal dismissed*, Nos. 13-1242, 13-1248 (2d Cir. June 17, 2013); *Speed v. United States*, Nos. 10-CV-3333, 04-CR-0336, 2020 WL 6290385 (S.D.N.Y. Oct. 27, 2020), *aff'd*, No. 20-3769-pr, 2022 WL 16984680 (2d Cir. Nov. 17, 2022) (summary order), *cert. denied*, 143 S. Ct. 1047 (2023); *Speed v. United States*, No. 16-CV-4500, 2020 WL 7028814 (S.D.N.Y. Nov. 30, 2020).

Because Movant's previous Section 2255 motions were decided on the merits, the present Section 2255 motion is a second or successive one. *See Corrao v. United States*, 152 F.3d 188, 191 (2d Cir. 1998).

Before a second or successive Section 2255 motion is filed in the district court, authorization from the appropriate court of appeals is required. 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). Movant must therefore move in the United States Court of Appeals for the Second Circuit for permission to pursue the present Section 2255 motion.¹

CONCLUSION

In the interest of justice, the Court directs the Clerk of Court to transfer the present Section 2255 motion, as a second or successive Section 2255 motion, to the United States Court of Appeals for the Second Circuit. *See* 28 U.S.C. § 1631; *Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996). This order closes this civil action in this court. If the Court of Appeals authorizes Movant to proceed in this matter, he shall move to reopen this action under this civil docket number (1:23-CV-4809 (PKC)).

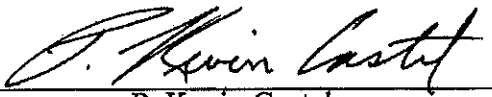
As the present motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

¹ Movant must demonstrate to the Court of Appeals that the present Section 2255 motion is based on newly discovered evidence or a new rule of constitutional law made retroactive by the Supreme Court. *See* § 2255(h).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: June 8, 2023
New York, New York


P. Kevin Castel
United States District Judge